

SB Civil Writ Petition No.3388/2004

Smt.Manorama Devi v. Ram Chandra & Ors.

Date of Order :: 13th December, 2005

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. D.R.Bhandari, for the petitioner.
Mr. Durga Ram]
Mr. J.K.Bhaiya] for the respondents.

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In a suit for partition an opportunity to produce evidence first was given to the petitioner defendant as burden to prove all the issues was put on her.

By an order dated 24.11.1998 trial court after recording statements of defendant petitioner summoned remaining witnesses of defence. The suit was fixed on 30.11.1998 for recording defendant's evidence, accordingly, notices were issued on 27.11.1998 to Shri Arjunlal, Ramnarain and Mangilal to appear before the court. The notice issued to Shri Arjunlal returned unserved and the notice to Shri Mangilal too returned unserved with a report made by the process clerk of the court of Additional District Judge, Nimbahera to the effect that notice was received by him on 30.11.1998 at 4.00 PM i.e. after court hours. A request was also made by the process clerk to send fresh notices effecting service. It is admitted and also apparent from perusal of document Ex.4 that notice was served on Ramnarain on

29.11.1998. The trial court by order impugned dated 30.11.1998 after recording statements of DW-2 Shri Chhattarlal closed defendant's evidence and fixed the suit on 6.1.1999 for recording plaintiff's evidence. Being aggrieved by the order dated 30.11.1998 instant petition for writ is preferred.

Heard counsel for the parties.

There is no dispute about the fact that notice issued by the trial court to summon Shri Mangilal and Arjunlal returned unserved, as such there was no occasion for them to appear before the trial court on 30.11.1998. It is also worthwhile to note that notices were issued on 27.11.1998 by the office of the trial court and the same were made returnable on 30.11.1998. The notice pertaining to Shri Mangilal was received by the process clerk of the court of Additional District Judge, Nimbahera on 30.11.1998 after court hours. There was as such no time available to make any efforts to effect service of notice upon Shri Mangilal. An effort to effect service of notice upon Shri Arjunlal too was made on 30.11.1998, the day on which the matter was fixed before the court.

It is well settled that service of notice is always desirable to be effected a sufficient time before the time specified in notice for the attendance of person summoned. Order 16 Rule 9 CPC in specific

terms provides that service shall in all cases be made a sufficient time before the time specified in summons for attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

In the present case the notices were issued to summon the witnesses returned unserved for reason that sufficient time was not provided to effect service. A court should always keep in mind while issuing notice to effect service to provide reasonable time to the person/party concerned for preparation and for travelling to the place at which his/its attendance is required.

By the order impugned the trial court closed defendant's evidence in spite of the fact that the persons summoned as witnesses were not served with the notices issued to call them. It is true that the notice issued to Shri Ramnarain was served upon him and he was having sufficient time to prepare himself and to appear before the court but he failed to appear before the court. In failure to appear before the court by Shri Ramnarain the appropriate course before the court was to proceed in accordance with Rule 10 of Order 16 CPC.

I am of the considered opinion that in the present case the court for no just and valid reason

closed the evidence of the defendant petitioner, the same amounts to denial of reasonable opportunity of defence. The order impugned, therefore, is perverse and the same deserves to be quashed.

Accordingly the writ petition is allowed. The order impugned dated 30.11.1998 passed by the District Judge, Udaipur in Civil Original Suit No.107/95, Shri Ramchandra v. Smt. Manorama Devi, is quashed. The trial court is directed to afford a fresh opportunity to the defendant to lead remaining evidence.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.